



DEPARTMENT OF JUSTICE

Antitrust Division

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[Date Currently Unavailable]

Douglas Mercier, Esquire
Corporate Counsel
Alexander's Home Health
1065 Bluecutt Road
Post Office Box 8700
Columbus, Mississippi 39705-8700

Dear Mr. Mercier:

This letter responds to the request of your predecessor, Laura Leigh Lewis, pursuant to the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, for a statement of the Department's enforcement intention regarding a proposal by three home health agencies in Mississippi to form a statewide network to contract with managed care plans. The network, to be called Home Care Alliance, Inc. ("the Alliance"), would be non-exclusive in nature and would avoid joint price setting by employing a "messenger model" contracting process. For the reasons stated below, the Department has no present intention to challenge the Alliance if it is implemented as proposed.

As we understand from your request, and from our independent investigation, home health agencies in Mississippi are licensed and franchised to operate within strict geographic territories, based on areas that they were serving when the state of Mississippi suspended its Certificate of Need program and declined to certify any additional home health agencies. A home health agency may not operate outside its designated territory.

The Alliance proposes to form a network comprised initially of three such agencies: Alexander's Home Health Agency, Inc., Continue Care Home Health,

and South Mississippi Home Health Agency. While each of these agencies faces substantial competition in the territory in which it operates, with the exception of one county, Grenada, which Continue Care and Alexander's Home Health Agency both serve, the proposed members of the Alliance do not compete with each other.

The Alliance proposes to contract with payers by employing an independent third party ("the messenger") to communicate pricing and other competitively sensitive information between the agencies and payers. Each member will provide the messenger with its price and fee schedules, which the messenger will convey to payers. The messenger will then submit any contract proposals received from payers to individual Alliance members, who will unilaterally decide whether to accept the terms offered by the payer. Members will be prohibited from discussing or otherwise communicating among themselves information about their own contract offers or their plans or views concerning payers' offers.

At the request of a payer, the messenger may discuss with the payer such potentially competitively significant non-price issues as utilization review, credentialing, and quality assurance standards. The messenger will not negotiate or agree to any such standards on behalf of the members or in any way attempt to require a payer to adopt any particular standards. The Alliance will provide credentialing, utilization review and quality assurance monitoring, claims processing and other administrative functions.

While no Alliance member currently belongs to another home health network, the Alliance would be non-exclusive in nature. Thus, each member would remain free to enter into other home health networks if it chooses. In addition, members may contract individually with any payer, even if the member has rejected that payer's contract offer to the Alliance.

Given these facts, the Department has no intention to challenge the formation of the Alliance. With the exception of one county, the proposed members of the Alliance are not horizontal competitors in any relevant market, and cannot become competitors in the future without a change in Mississippi law. Thus, there is little possibility of horizontal collusion among the initial participants. While the Alliance envisions the possibility of eventually adding additional members to the

network, this should not cause harm to competition since the network will operate using the messenger model. Networks using messenger model arrangements that are properly designed and implemented rarely present substantial antitrust concerns. The Alliance's messenger model arrangements appear to be properly structured to avoid agreements on price and other competitively sensitive matters. If properly carried out, these arrangements should not result in price collusion or cause anticompetitive harm.

While the Department has no intention of challenging the formation of the Alliance at this time, in keeping with our usual practice, should the Alliance's activities prove to be anticompetitive in purpose or effect, the Department remains free to bring whatever action or proceeding it subsequently comes to believe is required by the public interest.

This statement is made in accordance with the Department of Justice's Business Review Procedure, 28 C.F.R. § 50.6, a copy of which is enclosed. Pursuant to its terms, your business review request and this letter will be placed in a file that will be available immediately to the public. In addition, any supporting data that you have not identified as confidential business information under paragraph 10(c) of the Business Review Procedure also will be made publicly available in 30 days.

Sincerely,

Anne K. Bingaman